



IN THE MATTER OF THE DISQUALIFICATION OF

ARB CASE NO. 02-109

EDWARD A. SLAVIN, JR.,

DATE: January 24, 2003

Counsel for Complainant in

Jean F. Greene v. EPA Chief Judge Susan Biro, U.S. Environmental Protection Agency (EPA), EPA Office of Inspector General, and EPA Office of Administrative Law Judges, DOL OALJ No. 2002-SWD-00001, HUDALJ No. 02-01-NAL

ORDER

Both the Complainant and the Complainant's counsel (hereinafter, "the Petitioners") have appealed the disqualification of the Complainant's counsel in the above-noted whistleblower complaint by William C. Cregar, Acting Chief Administrative Law Judge of the Department of Housing and Urban Development.¹ Such an appeal would ordinarily be heard by the Department of Labor's Chief Administrative Law Judge pursuant to 29 C.F.R. § 18.36(b), but was referred to this Board by the Secretary's Order of Referral dated August 19, 2002, following recusal of Chief Administrative Law Judge John M. Vittone. As indicated in the Order of Referral, the same circumstances that support recusal of Chief Administrative Law Judge Vittone also prevent referral of this matter to the Associate Chief Administrative Law Judge, and warrant substitution of this Board pursuant to 29 C.F.R. § 18.1(b) (2002). *See Holub v. H. Nash Babcock & King, Inc.*, 93-ERA-25, Ord. Reversing Disqualification (Sec'y Feb. 6, 1995).

Section 18.36(b) provides, in pertinent part:

Any attorney . . . so suspended or barred may appeal to the Chief Judge, but no proceeding shall be delayed or suspended pending disposition of the appeal; provided, however, that the administrative law judge shall suspend the proceeding for a reasonable time for the purpose of

¹ Acting Chief Judge Cregar has been "loaned" by the Department of Housing and Urban Development to assist the Department of Labor Office of Administrative Law Judges by hearing the above-noted whistleblower complaint, pursuant to Office of Personnel Management regulatory authority at 5 C.F.R. § 930.213 (2001).

enabling the party to obtain another attorney or representative.

29 C.F.R. § 18.36(b). Because adjudication of the whistleblower complaint is still proceeding before Acting Chief Administrative Law Judge Cregar, the record in the case must remain with Judge Cregar. In order to facilitate the Board's review of this appeal, the Administrative Law Judge is to provide the Board copies of relevant documents contained in the case record in the whistleblower complaint. Specifically, the documents to be provided include the following: all documents contained in the record of proceedings in the case at the time that Judge Cregar issued the Order to Show Cause on January 28, 2002, and all documents issued by Department of Labor Administrative Law Judges that Judge Cregar cited in the Order of Disqualification dated June 20, 2002. In addition, Judge Cregar should ensure that these documents are enumerated on an accompanying list and that a copy of that list is served on the Petitioners in this matter and on counsel for the EPA respondents in the whistleblower complaint. In order to expedite the Board's review in this matter, the foregoing documents should be provided to the Board within 20 days of the date of issuance of this Order.

The Board is in receipt of the Petitioners' July 16 and July 26, 2002 responses to the Notice of Receipt of Appeal and Prehearing Order that was issued by Chief Judge Vittone July 2, 2002. The EPA respondents in the whistleblower complaint did not initiate or otherwise participate in Judge Cregar's disqualification of the Complainant's counsel, and an opportunity for those parties to submit argument in response to the Petitioners' July 16 and 26 pleadings is thus unnecessary.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge